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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Defendant Rusty Ralph Lemorande
Correspondence Address	RUSTY LEMORANDE 1245 NORTH CRESCENT HEIGHTS BLVD #B LOS ANGELES, CA 90046 UNITED STATES lemorande@gmail.com 323-309-6146
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Rusty Lemorande
Filer's email	Lemorande@gmail.com
Signature	/Rusty Lemorande/
Date	09/18/2018
Attachments	NOLD - MOTON FOR SUSPENSION AND TO COMPEL.SEND.pdf(1221873 bytes)

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 IMAGE TEN, INC.

4 Opposer

5 v.

6 RUSTY LEMORANDE

7 Applicant
8

Opposition No. [91233690](#)

MOTION TO SUSPEND PROCEEDINGS
AND TO COMPEL ACTION ON PART
OF IMAGE 10, OPPOSER

9
10 Serial No: 87090468

11 Publication date: 11/29/2016

12 Opposition Number: 91233690

For the Mark: NIGHT OF THE LIVING DEAD

13 **INTRODUCTION**

14 As the adage going, there appears to be something fishy going on here, a speculation which
15 hopefully will be equally evident to the TTAB as it reads this document, a motion filed due to
16 the continuing failure of Image 10 to 1) respond to requests from Applicant complying with
17 TTAB orders, 2) failure to file a Motion to Withdraw as promised, and 3) sign (or at least revise)
18 a Joint Stipulation Agreement as agreed with Applicant several weeks ago on August 31, 2018.

19 Specifically, in the TTAB's last order, Opposer was instructed to provide documents previously
20 requested by Applicant within 27 days.

21 As has previously occurred, Opposer waited until the last day of the TTAB deadline to file its
22 'responses'. And again, as has previously occurred, Opposer's response was entirely useless.

23 **AS TO OPPOSER'S RESPONSE TO THE REVISED DOCUMENT REQUEST**

24 Once again, Opposer provided no documents but merely inappropriate pattern, boilerplate
25 responses to all 50 of the document requests (save one, in which an additional boilerplate
26 sentence was added.) (See **Exhibit #1 and #2** for Opposer's email and attached response
27 document.)

28 Specifically, in all of Opposer's responses to date, no documents were provided, and for
 Opposer's most recent responses numbered 1 through 50 (except for responses #6 and #32)
 Opposer gave identical pattern responses. Responses #6 and #32 were also identical but each
 included an additional pattern sentence.

1 The pattern responses in all responses were as follows:

2 *“Opposer incorporates the Preliminary Statement and General Objections set*
3 *forth above. Opposer objects to the extent the request seeks documents protected*
4 *from discovery by the attorney-client privilege or attorney work product doctrine.*
5 *Opposer further objects to the extent documents contain confidential and*
6 *proprietary information. Opposer also objects to the extent the documents are not*
7 *relevant to the current proceeding.”*

8 In response #6, Opposer restated the entirety of the above but added:

9 *“Opposer objects to this request as seeking documents that are neither relevant nor*
10 *reasonably calculated to lead to the discovery of relevant information.”*

11 This extra sentence is largely duplicative of the penultimate sentence in response #6, and is
12 possibly a ‘cut and paste’ error or an intentional act of obfuscation.

13 Additionally, in REQUEST FOR PRODUCTION NO. 22, Opposer’s response makes no sense.
14 Applicant’s request No. 22 states:

15 *“Produce all copies of all tax returns in any years in which Mr. Russell Streiner*
16 *claims to have received income or revenue from use of the of the Mark.”*

17 And then Opposer’s confusing response follows:

18 *RESPONSE TO REQUEST FOR PRODUCTION NO. 22: “Opposer objects to the*
19 *request given that it is untimely as the response to the request would be due after*
20 *the close of discovery. TBMP §403.03; 37 C.F.R. §2.120(a)(3).”*

21 The response to request No. 33 is equally curious.

22 *REQUEST FOR PRODUCTION NO. 33: Provide documentary evidence of the*
23 *licenses You described in your answer to Interrogatory No. 34 for action figures, toys,*
24 *T-shirts, videos, movie still and various memorabilia.*

25 Opposer states the same pattern objections as in all the other 49 requests...

26 *RESPONSE TO REQUEST FOR PRODUCTION NO. 33: “Opposer also*
27 *incorporates the Preliminary Statement and General Objections set forth above.*
28 *Opposer objects to the extent the request seeks documents protected from discovery*
29 *by the attorney-client privilege or attorney work product doctrine. Opposer further*
30 *objects to the extent documents contain confidential and proprietary information.*
31 *Opposer also objects to the extent the documents are not relevant to the current*
32 *proceeding”.*

33 ...but then Opposer adds:

1 *“Subject to and without waiving the foregoing objections, Opposer will produce*
2 *non-privileged responsive documents to the extent such documents exist.”*
3 [Emphasis added].

4 This promise of forthcoming documents has been made before, however no documents have ever
5 been later forthcoming. Stating the promise here again raises the question: ‘Just when will such
6 documents be located and produced’, particularly given the 11th hour submission of Opposer’s
7 responses.

8 Opposer’s pattern objections are inexplicable, inapplicable and seem to have been made with a
9 lack of good faith. All of Applicant’s requests are solely for documents commonly associated
10 with proof of an ongoing and functioning business which Opposer claims in its opposition it has
11 conducted since 1978 (e.g. documents such tax returns or financial reports, copies of licenses,
12 etc.)

13 None would be subject to privileges for none require the advice of counsel in anticipation of
14 litigation. In addition, Opposer failed to respond to Applicant’s reasoned and researched
15 arguments in support of his view that such documents are under no such protection. (See **Exhibit**
16 **#3**).

17 **RE APPLICANT’S ATTEMPT TO FOLLOW THE INSTRUCTION OF THE TTAB IN**
18 **ITS LAST ORDER**

19 Given the TTAB’s prior order and admonitions, Opposer’s response seemed extraordinary to
20 Applicant. As the TTAB suggested, Applicant picked up the phone and called Opposer to discuss
21 this matter and, perhaps, be given a reasonable explanation for the confusing and utterly
22 unresponsive responses to the document request. (For the record, this call was scheduled after
23 several prior email requests by Applicant. See **Exhibit #3, Part B** – highlight added). Although
24 Applicant made the request to call on August 28, Opposer delayed the call by four days creating
25 further delays in this time-sensitive matter with several unnecessary emails pertaining to simply
26 scheduling a date and time (See **Exhibit #3, Part B** – highlights added).

27 Prior to the call, Applicant, by email, took the time to lay out the concerns for the upcoming
28 discussion, including:

 “1) Despite the order to produce, every request appears to be answered
 with a blanket pattern of objections such as 'attorney-client', 'non-
 relevance' and 'confidentiality'.

 2) The majority of my requests are directed solely to reveal the
 ongoing **business of Image 10** since its inception. None of the requests, I
 believe, are subject to attorney-client protection or attorney work product
 exceptions since all are a part of the regular business of a film company.
 In other words, none require the attention of an attorney, certainly not in
 anticipation of possible litigation.

1 3) In addition, several of the requests pertain to matter of **public**
2 **record**, yet you claim they are protected. I ask respectfully, did you read
all the individual requests?

3 4) As to **tax returns**, as I have previously stated in email correspondence
4 (including citing cases) the law seems clear on this: Tax returns are
5 sometimes privileged from discovery as long as the information can be
6 provided through alternative means, such as **financial statements**. You
have provided nothing of this sort.

7 5) The production requests include proof of **licenses** or similar which may
8 have been granted by Image 10. Again, the issuing of a license or contract
9 pertaining to intellectual property is a common business practice. No
attorney involvement would be required, certainly not as far as prospective
litigation.

10 6) I would also ask why you waited until the last day to file responses that
11 not only were merely boilerplate-pattern objections but, as such, would
12 only require a day or so to prepare and send (once receiving the TTAB
order)?”

13 (See **Exhibit #3** for the full email containing the above text.)

14 At the beginning of the telephone conference, the mystery was answered: Counsel for Opposer
15 explained that there was ‘nothing to discuss’ since Counsel was imminently withdrawing from
16 representation of Image 10. Counsel for Opposer said such withdrawal would be filed within one
business day which would be the following Tuesday (given the imminent Labor Day, Monday
holiday).

17 Applicant sent an email confirming the completed phone conversation. (See **Exhibit #4** –
18 highlight added.)

19 As of this date, two and ½ weeks later, still no such motion for withdrawal has been filed. despite
20 repeated and ignored requests by Applicant.

21 **RE A JOINT STIPLATION TO SUSPEND DISCOVERY**

22 In the interest of sparing TTAB time, Applicant proposed to Opposer that we enter into a joint
23 stipulation for extending discovery, allowing 1) Applicant to recover lost time because of
24 Opposer’s non-response to the discovery requests, and allowing 2) Opposer adequate time to
25 secure new counsel.

26 Counsel for Opposer agreed. (See **Exhibit #4**).

27 Applicant drafted such an agreement and submitted it to Counsel for Opposer. (See **Exhibit #5**
28 and **#6**). However, over the next several weeks, despite repeated attempts by Applicant to secure

1 either Opposer's signature on the joint stipulation, or provide suggested revisions, there has been
2 no meaningful response from Opposer. Opposer's counsel's dilatory actions include stating he
3 was too busy to attend to the matter (see **Exhibit #7** and **Exhibit #7, Part B** – highlights added),
or no response whatsoever.

4 Applicant, concerned that this action (or failure to act) by Counsel for Opposer might be
5 dissembling, sent an email last week (Sept 14, 2018, See **Exhibit #8** with highlights added) and
6 placed another phone call to Counsel for Opposer on Friday evening (Sept 15th, 2018 – See
7 **Exhibit #9** – highlights added) restating the urgency of the matter, and informing Counsel for
Opposer that unless there was some response, Applicant would file a motion with the TTAB the
following week.

8 Applicant then followed up with an email to Opposer confirming and transcribing the voice mail
9 previously left on Counsel for Opposer's regular office number. (See **Exhibit #10** with
highlights).

10 As of the date of this filing, Applicant has heard nothing from Counsel for Opposer and,
11 therefore, is filing this motion.

12 **RE APPLICANT'S REQUESTS FOR REMEDY**

13 Applicant requests that the terms of the proposed stipulation be ordered, specifically that
14 discovery be tolled so that:

- 15 1) Opposer may obtain new counsel,
- 16 2) New counsel for Opposer (or opposer *in prop per*) may properly comply with the TTAB's
17 most recent order of July 23, 2018 by providing the documents requested. Following receipt
18 of the ordered documents,
- 19 3) Applicant may then properly analyze the submissions and conduct further discovery as
20 necessary, reasonable and appropriate (including the possibility of depositions).

21 Applicant further requests that TTAB order whatever **sanctions** it feels appropriate as a result of
22 Opposer's failure to comply with TTAB's prior orders, and failure to be respectful of both
Applicant's and the TTAB's time and efforts is attempting to resolve this current matter, and
prior difficulties, in order to bring the Opposition, initiated by Opposer, to a conclusion.

23 It might be useful to note, that as of October 9, 2017 when Applicant first made requests for
24 documents, in the subsequent time – almost one year - not a single document has yet been
25 provided to Applicant.

26 As a final note, perhaps less legal than one of common sense, it seems utterly unfair to both
27 Applicant and the TTAB to cause such an unnecessary and disrespectful mountain of motions
28 and supporting documents (and then drafted orders) in place of simple responses to
commonplace, reasonable and relevant Discovery requests. Applicant believes Counsel for

1 Opposer owes a duty of diligence to his client but also to Opposing counsel (regardless of an *in*
2 *pro per* status) and especially to the TTAB, Counsel for Opposer also being an Officer Of The
3 Court

4 **CERTIFICATION OF GOOD FAITH EFFORT TO RESOLVE DISPUTE**

5 In accordance with Trademark Rule 2.120(e), Petitioner hereby certifies that he has made a good
6 faith effort to resolve the issues presented above.

7 **SUSPENSION PENDING RESOLUTION**

8 With respect to the effect of a motion to compel discovery, the Trademark Rules of Practice
9 provide: When a party files a motion for an order to compel initial disclosure, expert testimony
10 disclosure, or discovery, the case will be suspended by the Board with respect to all matters not
11 germane to the motion. 37 C.F.R. § 2.120(e)(2). Respectfully, Petitioner asks that this matter be
12 suspended, and both the discovery and trial dates be extended and/or reset pending resolution of
13 this motion.

14 Respectfully submitted this 18th day of September 2018.

15 /Rusty Lemorande/

16 RUSTY LEMORANDE
17 Applicant In Pro Per
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Joint Stipulation and Motion to Suspend Proceedings** was served on Opposer’s counsel of record in the above-captioned proceedings on September 11th, 2018, via email correspondence addressed to: mmeeks@buchalter.com, and fbhatti@buchalter.com

/Rusty Lemorande/
Rusty Lemorande



R.H. Lemorande <lemorande@gmail.com>

Image Ten, Inc. v. Rusty Ralph Lemorande - Image Ten Inc.'s Supplemental Response [IWOV-BN.FID2349886]

Tooley, Geri <gtooley@buchalter.com>

Mon, Aug 20, 2018 at 7:05 PM

To: "lemorande@gmail.com" <lemorande@gmail.com>

Cc: "Meeks, Michael L." <mmeeks@buchalter.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>

Attached for your review is Opposer Image Ten, Inc.'s Supplemental Response to Applicant Rusty Lemorande's Second Set of Request for Production of Documents.

Thank you.

Geri Tooley

Buchalter

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OPPOSER_S SUPPLEMENT RESPONSE TO APPLICANT_S 2ND SET RFPD.PDF

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>Image Ten, Inc.</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">v.</p> <p>Rusty Ralph Lemorande</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No.: 91233690</p> <p>OPPOSER IMAGE TEN, INC.'S SUPPLEMENTAL RESPONSE TO APPLICANT RUSTY LEMORANDE'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS</p>
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PROPOUNDING PARTY: APPLICANT RUSTY RALPH LEMORANDE ("RUSTY")
RESPONDING PARTY: OPPOSER IMAGE TEN, INC.
SET NO.: ONE (1)

**OPPOSER'S RESPONSE TO APPLICANT'S SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120 of the Trademark Rules of Practice, Opposer Image Ten, Inc. ("Opposer") hereby submits responses to the Second Set of Requests for Production of Documents propounded by Rusty Ralph Lemorande ("Lemorande"), as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTION

1. Opposer hereby provides its Supplemental Response to Lemorande pursuant to the TTAB Order dated July 23, 2018.
2. Opposer states that its responses are based on its present knowledge, information or belief. Opposer also states that they are responding to the requests as they interpret and understand each request. Further discovery and investigation may reveal information not presently known to Opposer upon which Opposer may rely at the time of trial. Opposer reserves

its right, without assuming any obligation not required by law, to amend or supplement its responses to the requests as necessary.

3. Opposer states that the information and/or documents provided in its responses to the requests do not constitute an admission that such information is relevant to the pending litigation. Opposer specifically reserves all objections to the relevancy or admissibility at trial, or in connection with any motion, hearing or other proceeding, of any information provided.

4. Opposer states that nothing contained in these responses should be construed as an admission relative to the existence or non-existence of any fact and no response is to be considered an admission about the relevance or admissibility of any information contained herein.

5. Opposer expressly incorporates this Preliminary Statement into each of the following responses.

GENERAL OBJECTIONS

A. Opposer objects to the Requests propounded by Applicant to the extent they seek information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence with respect to the issues in this action

B. Opposer objects to the Requests as burdensome and as designed, in whole or in part, to harass rather than to serve any legitimate discovery purpose.

C. Opposer hereby objects to each and every request as being vague and ambiguous.

D. Opposer objects to the Requests as overbroad and not limited to a reasonable time period.

E. Opposer objects to the Requests to the extent they seek information of a commercially sensitive nature. Revealing such information would substantially and irreparably injure Applicant by revealing information which derives independent economic value from not being generally known or which has been acquired primarily through confidential research and development efforts by or on behalf of Applicant.

F. Opposer objects to the Requests to the extent they seek privileged information protected by the attorney-client privilege or the attorney-work product doctrine. Such privileged information includes, but is not limited to, the following:

- a. Information which constitutes, reflects, refers to or relates to confidential communications between officers, directors or employees of Opposer and counsel; and
- b. Information which constitutes, reflects, refers to or relates to the impressions, conclusions, opinions or mental process of counsel, their agents or employees.

G. Opposer objects to the Requests to the extent they seek information relating to employees or customers of Opposer, the discovery of which would invade their right to privacy.

H. Opposer objects to the Requests to the extent Applicant has exceeded the limit for such Requests under the Federal Rules of Civil Procedure.

RESPONSES

REQUEST FOR PRODUCTION NO. 1:

Produce copies of all licenses that identify You as a licensor of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 2:

Produce copies of licenses that identify You as the licensee of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 3:

Produce copies of all assignments of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 4:

Produce all Documents that evidence your ownership of the Mark in the United States.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 5:

Produce copies of complaints and other documents filed by You or on Your behalf regarding any Action You have filed regarding the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 6:

Produce copies of financial statements showing all income earned by you from use of the Mark for Motion Pictures in the last 20 years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to this request as seeking documents that are neither relevant nor reasonably calculated to lead to the discovery of relevant information. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 7:

Produce all other Documents in Your possession, not produced in response to Requests #1-6 above, that in any manner reference, memorialize, acknowledge, mention, discuss or otherwise pertain to Your ownership of the Mark for Motion Picture production.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 8:

Produce all Documents to support the claims You made in the Notice of Opposition.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent

documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 9:

Produce all Documents to support your answer to Request for Admission #1 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 10:

Produce all Documents to support your answer to Request for Admission #2 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 11:

Produce all Documents to support your answer to Request for Admission #3 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent

documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 12:

Produce all Documents to support your answer to Request for Admission #4 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 13:

Produce all Documents to support your answer to Request for Admission #5 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 14:

Produce all Documents to support your answer to Request for Admission #6 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the

attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 15:

Produce all Documents to support your answer to Request for Admission #7 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 16:

Produce all Documents to support your answer to Request for Admission #8 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 17:

Produce all Documents to support your answer to Request for Admission #9 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 18:

Produce all Documents to support your answer to Request for Admission #10 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 19:

Produce copies of all tax returns in any years in which You claim to have received income or revenue from use of the of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Opposer also the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information protected from discovery. Opposer also objects to the extent the documents are not relevant to the current proceeding and are not reasonably calculated to lead to the discovery of relevant information.

REQUEST FOR PRODUCTION NO. 20:

Produce copies of all receipts and invoices in any years in which You claim to have received income or revenue from use of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 21:

Produce copies of all tax returns in any years in which Mr. John A. Russo claims to have received income or revenue from use of the of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 22:

Produce all copies of all tax returns in any years in which Mr. Russell Streiner claims to have received income or revenue from use of the of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Opposer objects to the request given that it is untimely as the response to the request would be due after the close of discovery. TBMP §403.03; 37 C.F.R. §2.120(a)(3). Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client

privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 23:

Produce copies of all tax returns in any years in which Mr. Mr. Gary Streiner claims to have received income or revenue from use of the of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 24:

Produce copies of all invoices and receipts in any years in which You claim to have received income or revenue from use of the of the Mark for tee-shirts, toys, and other merchandise as described in your Answers to Interrogatories, Set 1.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 25:

Produce all correspondence, including copies of agreements, between You and Robert Lucas as references in your Answer to Interrogatory 15.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 26:

Produce all documents evidencing annual gross revenue received from the conduct of entertainment media production for each of the past five years as described in Interrogatory No. 31.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 27:

Provide copies of all documents evidencing annual gross revenue You have received from your use or licensing of the Mark for the production of a Motion Picture in the last ten years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 28:

Produce copies of all documents which evidence each documentary concerning the title “Night of the Living Dead” and the Mark as reported by you in the answer to Interrogatory N. 33.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 29:

Provide copies of all documents evidencing any revenue generating activity regarding the Mark as described by you in answer to Interrogatory No. 34.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 30:

Provide copies of all licenses for action figures, toys, T-shirts, videos, movie stills, and similar as described by you in your answer to Interrogatory No. 34.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the

extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 31:

Provide all written documents evidencing the horror conventions described by you in Answer to Interrogatory No. 34.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 32:

Provide documentary evidence of the ‘merchandise and signatures from actors, director and writers are provided on various memorabilia items including copies of original movie posers for the movie’ as described by you in your answer to Interrogatory No, 34.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 33:

Provide documentary evidence of the licenses You described in your answer to Interrogatory No. 34 for action figures, toys, T-shirts, videos, movie still and various memorabilia.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged responsive documents to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 34:

Provide copies of receipts, invoices or any written documentation of income relived for the providing of signatures on various memorabilia items including copies of movie posters as described in your answer to Interrogatory.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 35:

Provide written documents evidencing the ‘various documentaries and anniversary release of the movie’ as stated in your answer to Interrogatory 35.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 36:

Provide written documents evidencing the ‘new versions of the original film’ which You state you have ‘marketed’ in your answer to Interrogatory #35.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 37:

Provide written evidence of the two documentary films you describe in your answer to Interrogatory No. 37.

RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 38:

Provide written documentation evidencing the ‘trust’ referred to in your answer to Interrogatory No. 4.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the

extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 39:

Provide written documentation of the continuing ‘required corporate tax payments’ as described by you in your answer to Interrogatory #45.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 40:

Provide written evidence of the ‘corporate fees’ you claim Image 10 has paid, since inception in 1967 until the present, as described in your answer to Interrogatory #46

RESPONSE TO REQUEST FOR PRODUCTION NO. 40:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 42:

Produce all Documents to support your answer to Request for Admission #34 in Rusty Lemorande’s First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 42:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by

the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 43:

Provide written evidence of the licensing of its trademark Night of the Living Dead and images from the movie Night of the living Dead since the movie was released in 1968..

RESPONSE TO REQUEST FOR PRODUCTION NO. 43:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 44:

Provide all documents, including correspondence, pertaining to the transfer of the registration from SphereWerx, LLC to Image 10.

RESPONSE TO REQUEST FOR PRODUCTION NO. 44:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 45:

Provide all documents, including correspondence pertaining to the ‘previous relationship’ and ‘work in the past’ between SphereWerx LLC and Image 10.

RESPONSE TO REQUEST FOR PRODUCTION NO. 45:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO.46:

Produce copies of all interviews mentioned and described in Answer to Interrogatory #36 unless reasonably available on the Internet, and in such instance(s):

RESPONSE TO REQUEST FOR PRODUCTION NO. 46:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 47:

Produce the links to the readily available interviews as mentioned and described in Answer to Interrogatory #36..

RESPONSE TO REQUEST FOR PRODUCTION NO. 47:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 48:

Provide written evidence of the existence and occurrence of the ‘activities’ You describe in your answer to Interrogatory #47.

RESPONSE TO REQUEST FOR PRODUCTION NO. 48

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

Dated: August 20, 2018

Respectfully Submitted,

/mmeeks/

Farah P. Bhatti
Michael Meeks
Attorneys for Opposer
Buchalter
18400 Von Karman Ave., Suite 800
Irvine, CA 92612
949.224.6272 (phone)
949.720.0182 (fax)
trademark@buchalter.com (email)

CERTIFICATE OF SERVICE

Opposer, Image Ten, Inc., hereby certifies that a copy of this OPPOSER IMAGE TEN, INC.'S SUPPLEMENTAL RESPONSE TO APPLICANT RUSTY LEMORANDE'S SECOND SET OF REQUEST FOR PRODUCTION has been served upon Applicant on this 20th day of August, 2018 by email at the following address:

Lemorande@gmail.com





R.H. Lemorande <lemorande@gmail.com>

NOLD - Your recent responses to Applicant's revised document requests

6 messages

R.H. Lemorande <lemorande@gmail.com>

Tue, Aug 28, 2018 at 11:41 AM

To: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>

Hello:

I will call you later today to discuss the document you recently sent (regarding document production). I hope you will be available.

The key points for our discussion will be on my end:

- 1) Despite the order to produce, every request appears to be answered with a blanket pattern of objections such as 'attorney-client', 'non-relevance' and 'confidentiality'.
- 2) The majority of my requests are directed solely to reveal the ongoing **business of Image 10** since its inception. None of the requests, I believe, are subject to attorney-client protection or attorney work product exceptions since all are a part of the regular business of a film company. In other words, none require the attention of an attorney, certainly not in anticipation of possible litigation.
- 3) In addition, several of the requests pertain to matter of **public record**, yet you claim they are protected. I ask respectfully, did you read all the individual requests?
- 4) As to **tax returns**, as I have previously stated in email correspondence (including citing cases) the law seems clear on this: Tax returns are sometimes privileged from discovery as long as the information can be provided through alternative means, such as **financial statements**. You have provided nothing of this sort.
- 5) The production requests include proof of **licenses** or similar which may have been granted by Image 10. Again, the issuing of a license or contract pertaining to intellectual property is a common business practice. No attorney involvement would be required, certainly not as far as prospective litigation.
- 6) I would also ask why you waited until the last day to file responses that not only were merely boilerplate-pattern objections but, as such, would only require a day or so to prepare and send (once receiving the TTAB order)?

These are the key items (but not all) that I would like to discuss today. Also, I'll be asking why you would respond to a TTAB order with such a blanket set of opposition statements, regardless of the nature of each individual request, and

No waivers of any kind should be construed from the above. All standard rights and remedies are reserved.

Sincerely,

RH Lemorande

--
RH Lemorande
P.O. Box 46771
LA, CA 90046
tel: 323 309 6146

--
Sent from Gmail Mobile Tel 323 309 6146

Meeks, Michael L. <mmeeks@buchalter.com>

Tue, Aug 28, 2018 at 6:39 PM

To: "R.H. Lemorande" <lemorande@gmail.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>

EXHIBIT 3 - Part B

Mr. Lemorande:

We are unable to meet and confer today. We would like to schedule a call for Friday to discuss. Please let us know when you are available.

Regards,

Michael Meeks

Buchalter

A Professional Corporation

18400 Von Karman Avenue, Suite 800 | Irvine, CA 92612-0514

Direct Dial: (949) 224-6431 | Cell Phone: (213) 265-4432 | Direct Fax: (949) 224-6210 | Main Number: (949) 760-1121

Email: mmeeks@Buchalter.com | www.buchalter.com | Bio

From: R.H. Lemorande [mailto:lemorande@gmail.com]

Sent: Tuesday, August 28, 2018 8:41 AM

To: Bhatti, Farah P.; Meeks, Michael L.

Subject: NOLD - Your recent responses to Applicant's revised document requests

[Quoted text hidden]

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R.H. Lemorande <lemorande@gmail.com>
To: "Meeks, Michael L." <mmeeks@buchalter.com>
Cc: "Bhatti, Farah P." <fbhatti@buchalter.com>

Wed, Aug 29, 2018 at 7:47 PM

Hello:

Would tomorrow be possible? That would help me.

If not, then I will make it work for Friday.

What time do you propose?

Thanks

Rusty

[Quoted text hidden]

R.H. Lemorande <lemorande@gmail.com>
To: "Meeks, Michael L." <mmeeks@buchalter.com>
Cc: "Bhatti, Farah P." <fbhatti@buchalter.com>

Thu, Aug 30, 2018 at 7:24 PM

I have not heard back from you regarding the call. Is there a problem?

[Quoted text hidden]

Meeks, Michael L. <mmeeks@buchalter.com>
To: "R.H. Lemorande" <lemorande@gmail.com>
Cc: "Bhatti, Farah P." <fbhatti@buchalter.com>

Thu, Aug 30, 2018 at 7:27 PM

Sorry. Busy days. How about a call at 3:30 tomorrow?

Sent from my iPhone

[Quoted text hidden]

R.H. Lemorande <lemorande@gmail.com>
To: "Meeks, Michael L." <mmeeks@buchalter.com>
Cc: "Bhatti, Farah P." <fbhatti@buchalter.com>

Thu, Aug 30, 2018 at 7:34 PM

That's fine.

[Quoted text hidden]



R.H. Lemorande <lemorande@gmail.com>

Our conversation today

2 messages

R.H. Lemorande <lemorande@gmail.com>

Sat, Sep 1, 2018 at 2:27 AM

To: "Michael L. Meeks" <mmeeks@buchalter.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>

Michael:

Thanks for speaking today.

Just to review, I understood from you that since you were withdrawing from representation of Image 10, there was nothing else for us to discuss today (such as regarding the document requests).

I'm sure you know that I will continue my request for these documents, and will need sufficient time to review once received, and plan for possible depositions, etc.

Would you agree to a joint stipulation to suspend discovery, say for 45 days, given, I suspect, it will take some time for the TTAB to rule on your withdrawal motion.

Please advise.

Thanks.

Rusty

--

RH Lemorande
P.O. Box 46771
LA, CA 90046
tel: 323 309 6146

Meeks, Michael L. <mmeeks@buchalter.com>

Sat, Sep 1, 2018 at 11:56 AM

To: "R.H. Lemorande" <lemorande@gmail.com>

Yes that would be fine.

Sent from my iPhone

[Quoted text hidden]

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R.H. Lemorande <lemorande@gmail.com>

DRAFT JOINT STIPULATION

1 message

R.H. Lemorande <lemorande@gmail.com>

Tue, Sep 11, 2018 at 1:21 AM

To: "Michael L. Meeks" <mmeeks@buchalter.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>

Michael

Please see the attached. If this works for you, let me know and I'll send it asap.

If you would like changes/additions, please let me know as soon as you can.

Sincerely,

Rusty

--

RH Lemorande

P.O. Box 46771

LA, CA 90046

tel: 323 309 6146

**NOLD - Stipulation re new counsel.draft for review.docx**

39K

DRAFT STIPULATION

EXHIBIT 6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IMAGE TEN, INC.

Opposer

v.

RUSTY LEMORANDE

Applicant

Opposition No. [91233690](#)

JOINT STIPULATION AND MOTION TO SUSPEND PROCEEDINGS

JOINT STIPULATION AND MOTION TO SUSPEND PROCEEDINGS

Applicant, Rusty Lemorande (“Lemorande”) and Opposer, Image Ten, Inc. (“Image 10”) respectfully move the Board to suspend the above-referenced consolidated proceeding for three (3) months from the date of the TTAB’s ruling on this motion, on the basis of the election of counsel for Image 10 to withdraw from its representation of Opposer.

Such 90 day period would allow Opposer 30 days to find new counsel, 30 days for new counsel (or Image 10 *in pro per*) to respond to the outstanding discovery requests, and a subsequent 30 days for Applicant to examine the documents and continue discovery, such as depositions, as necessary.

For the reasons stated above, the parties respectfully request that the Board grant their joint motion to suspend proceedings for three months from the date of the TTAB’s order on this motion. Upon resumption of the proceedings, the parties respectfully request that the Board reset all discovery and trial deadlines.

Respectfully submitted this 12th day of September, 2018.

/Rusty Lemorande/

RUSTY LEMORANDE
Applicant In Pro Per
1245 NORTH CRESCENT HEIGHTS BLVD #B
LOS ANGELES, CA 90046
UNITED STATES
lemorande@gmail.com
Phone: 323-309-6146

/Michael Meeks/

Attorney for Opposer

BUCHALTER, A PROFESSIONAL CORPORATION

18400 VON KARMAN AVENUE SUITE 800

IRVINE, CA 92612

UNITED STATES

mmEEKS@buchalter.com, fbhatti@buchalter.com, trademark@buchalter.com

Phone: 949-224-6272

DRAFT STIPULATION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Joint Stipulation and Motion to Suspend Proceedings** was served on Opposer's counsel of record in the above-captioned proceedings on September 11th, 2018, via email correspondence addressed to: mmeeks@buchalter.com, fbhatti@buchalter.com

/Rusty Lemorande/ _____
Rusty Lemorande



R.H. Lemorande <lemorande@gmail.com>

Withdrawal . NOLD

2 messages

R.H. Lemorande <lemorande@gmail.com>

Fri, Sep 7, 2018 at 1:00 PM

To: "Michael L. Meeks" <mmeeks@buchalter.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>

Hello:

When we last spoke, I understood you were filing a withdrawal the day after Labor Day (Tuesday past of this week.)

I haven't seen it yet. Will you be filing today perhaps?

Thanks.

Rusty

--

RH Lemorande
P.O. Box 46771
LA, CA 90046
tel: 323 309 6146

Meeks, Michael L. <mmeeks@buchalter.com>

Fri, Sep 7, 2018 at 1:03 PM

To: "R.H. Lemorande" <lemorande@gmail.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>

EXHIBIT 7 Part B

Hi Rusty:

Sorry for the delay in that filing. It is coming. If you want to send over a stip for a discovery stay, that's fine. I am just backed up with work at the moment.

Regards,

Michael Meeks

Buchalter

A Professional Corporation

18400 Von Karman Avenue, Suite 800 | Irvine, CA 92612-0514

Direct Dial: (949) 224-6431 | Cell Phone: (213) 265-4432 | Direct Fax: (949) 224-6210 | Main

Number: (949) 760-1121

Email: mmeeks@Buchalter.com | www.buchalter.com | [Bio](#)

From: R.H. Lemorande [mailto:lemorande@gmail.com]

Sent: Friday, September 07, 2018 10:01 AM

To: Meeks, Michael L.; Bhatti, Farah P.

Subject: Withdrawal . NOLD

[Quoted text hidden]

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R.H. Lemorande <lemorande@gmail.com>

Re: NOLD - RESENDING BECAUSE OF TYPOS. (I apologize for this).

1 message

R.H. Lemorande <lemorande@gmail.com>

Fri, Sep 14, 2018 at 2:47 AM

To: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Michael L. Meeks" <mmeeks@buchalter.com>

Michael

I appreciate your recent cordiality but I can't compromise my position by waiting any longer.

You told me two weeks ago you would file your withdrawal. That has not happened.

In order to make life easier for the TTAB, I suggested a stipulation which, in principle, you agreed to. It is not yet filed because you haven't addressed it.

I appreciate you're busy, but so am I - perhaps even busier than you with my work and client matters. Perhaps less so. But I believe I have been diligent, nevertheless.

The TTAB is unaware of any of this matter, but should have been made aware, I think, some time ago at least by you filing your withdrawal when you said you would.

I called you two weeks ago as the TTAB instructed. If you want to speak again to discuss any of this, let me know.

If you want to make a group call to the TTAB attorney, as she suggested in her order, let's do it tomorrow or at least schedule it tomorrow so she at least is on notice of a problem.

Please be advised, if none of the above occurs by the end of the day tomorrow (Friday) I will file a notice and motion with the TTAB regarding this matter.

Thank you

Rusty

--

Sent from Gmail Mobile Tel 323 309 6146

--

Sent from Gmail Mobile Tel 323 309 6146

[← Recents](#)[Edit](#)

Michael L. Meeks

Buchalter Atty

[message](#)[call](#)[video](#)[mail](#)[pay](#)

Today

NEW YORK TIME

8:50 PM Outgoing Call

1 minute

phone RECENT

[1 \(949\) 224-6431](tel:1(949)224-6431)

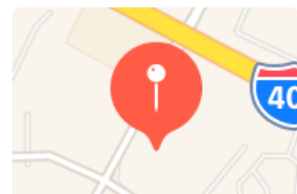
email

mmeeks@Buchalter.com

home

18400 Von Karman

Avenue Suite 800

[Favorites](#)[Recents](#)[Contacts](#)[Keypad](#)[Voicemail](#)



R.H. Lemorande <lemorande@gmail.com>

Prior phone call and voice mail yesterday

1 message

R.H. Lemorande <lemorande@gmail.com>

Sat, Sep 15, 2018 at 6:20 PM

To: "Michael L. Meeks" <mmeeks@buchalter.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>

Michael:

This is to confirm that I placed a call to you, yesterday Friday, at the end of the business day, Los Angeles time, to speak with you about your lack of response to the proposed joint stipulation, and your promise to timely file a motion to withdraw as counsel for Opposer (as you stated to me the Friday before Labor Day).

As I've previously written to you, I stated in the voicemail that I am concerned that your lack of attention to these matters is prejudicing my position in this proceeding with the TTAB.

I asked that you return my call that evening, or over the weekend, stating that, unless there was some answer as to your inaction, I would be filing a Motion with the TTAB due to your failure to respond to my various attempts.

Please be advised. Thank you.

Sincerely,

Rusty Lemorande

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